

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES RAY WILEY,

Plaintiff,

No. CIV S-04-1922 MCE KJM P

vs.

CHERYL K. PLILER, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under the authority of 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee for this action in effect at the time of his filing, or \$150.00. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$1.66 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly

1 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust
2 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
3 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28
4 U.S.C. § 1915(b)(2).

5 The complaint states a cognizable claim for relief pursuant to 42 U.S.C. § 1983
6 and 28 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a
7 reasonable opportunity to prevail on the merits of this action.

8 Plaintiff has requested the appointment of counsel. The United States Supreme
9 Court has ruled that district courts lack authority to require counsel to represent indigent
10 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
11 certain exceptional circumstances, the court may request the voluntary assistance of counsel
12 pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991);
13 Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court
14 does not find the required exceptional circumstances. Plaintiff's request for the appointment of
15 counsel will therefore be denied.

16 In accordance with the above, IT IS HEREBY ORDERED that:

17 1. Plaintiff's September 15, 2004 request for the appointment of counsel is
18 denied.

19 2. Plaintiff's request for leave to proceed in forma pauperis is granted.

20 3. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.
21 Plaintiff is assessed an initial partial filing fee of \$1.66. All fees shall be collected and paid in
22 accordance with this court's order to the Director of the California Department of Corrections
23 filed concurrently herewith.

24 4. Service is appropriate for the following defendants: Pliler, Narramore, Wooten.

25 4. The Clerk of the Court shall send plaintiff three USM-285 forms, one
26 summons, an instruction sheet and a copy of the complaint filed September 15, 2004.

1 5. Within thirty days from the date of this order, plaintiff shall complete the
2 attached Notice of Submission of Documents and submit the following documents to the court:

- 3 a. The completed Notice of Submission of Documents;
4 b. One completed summons;
5 c. One completed USM-285 form for each defendant listed in number 3
6 above; and
7 d. Four copies of the endorsed complaint filed September 15, 2004.

8 6. Plaintiff need not attempt service on defendants and need not request waiver of
9 service. Upon receipt of the above-described documents, the court will direct the United States
10 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4
11 without payment of costs.

12 DATED: May 4, 2005.

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15 UNITED STATES MAGISTRATE JUDGE
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NOTICE OF SUBMISSION
OF DOCUMENTS

_____/

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Complaint/Amended Complaint

DATED:

Plaintiff